

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CYNTHIA ACOSTA,

05-CV-1192-AS

ORDER

Plaintiff,

v.

UNITED STATES OF AMERICA
and SHERRIE COLE,

Defendants.

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Defendant, *Pro Se*

BROWN, Judge.

Magistrate Judge Donald C. Ashmanskas issued Findings and Recommendation (#39) on April 9, 2007, in which he recommended this Court grant Defendant United States of America's Motion to Dismiss Plaintiff's Complaint and Action (#28), dismiss with prejudice Plaintiff's claim against the United States, and *sua sponte* dismiss without prejudice Plaintiff's claim against Defendant Sherrie Cole. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

Because no objections to the Magistrate Judge's Findings and Recommendation were timely filed, this Court is relieved of its obligation to review the record *de novo*. *Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). See also *Lorin Corp. v. Goto & Co.*, 700 F.2d 1202, 1206 (8th Cir. 1983).

This Court has reviewed the legal principles *de novo* and does not find any error in the Magistrate's Findings and Recommendation as to granting Defendant United States of America's Motion to Dismiss and dismissing Plaintiff's claim against the United States with prejudice.

The Findings and Recommendation also recommends this Court dismiss Plaintiff's claim against Cole for lack of jurisdiction. Although the Findings and Recommendation does not set out a basis for dismissing Plaintiff's claim against Cole for lack of jurisdiction, the Court notes Plaintiff alleges in her Amended Complaint that the Court has subject-matter jurisdiction over Plaintiff's negligence claims against the government and Cole pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b)(1). The FTCA gives this Court jurisdiction to hear civil actions against the United States for money damages arising out of personal injuries caused by negligent acts of any employee of the government while acting within the scope of his employment. Because Cole was not an employee of the government at the time Plaintiff was injured and because Plaintiff brings only a common-law negligence claim against Cole, this Court lacks subject-matter jurisdiction over Plaintiff's claim against Cole under the FTCA. Accordingly, the Court adopts the Magistrate's recommendation that the Court *sua sponte* dismiss Plaintiff's claim against Cole for lack of subject-matter jurisdiction.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Ashmanskas's Findings and Recommendation (#39). Accordingly, the Court **GRANTS** Defendant United States's Motion to Dismiss Plaintiff's Complaint and

Action (#28), **DISMISSES** Plaintiff's action against the United States **with prejudice**, and *sua sponte* **DISMISSES** Plaintiff's action against Cole **without prejudice**.

IT IS SO ORDERED.

DATED this 31st day of May, 2007.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge